

QUESTIONS & ANSWERS

LEGISLATIVE RESEARCH COMMISSION (LRC) ENERGY POLICY ISSUES

COMMITTEE MEETING

January 18, 2012

**Ms. Robin W. Smith, Assistant Secretary for Environment,
Department of Environment and Natural Resources (DENR)**

Senator Blake: As I read all these different things that you are going to look into, how in the world do we ever get anything done? I mean this is, all we have got to do I go to Pennsylvania or some of these states and it would answer every question on here real quick. And just a question, you mentioned about property rights. That is a real stretch. You know, if you have a 10-acre tract, I've got a 10-acre tract, and I have leased my tract to the oil company and if you don't want to lease, you don't have to do it, but the facts are, that shortly after this gets going, even though you didn't think you didn't want to lease the property, eventually you will that, just based on revenue and common sense. Tell me one state, just one state that gets into this property rights issue that says that you as property owner have to do something. Which state does that?

Ms. Smith: I can get you that answer, but there is more than one. And, actually, every oil and gas producing state has some set of state laws that try to lay down what the operating rules are for dealing with these kinds of mineral rights, property rights issues. They do it in different ways, but there are multiple states that have what's called forced pooling rules. In fact I realized fairly recently that, in effect, North Carolina may be one of those. There are existing oil and gas statutes that have something that looks very much like a forced pooling provision. We are not advocating that the Legislature do one thing or the other, but the study language in H-242 directed us to look at consumer protection issues, including these issues, so what we are trying to do is lay out what the landscape looks like, what the issues that have come up in other states and give you sort of a menu of how other states have resolved these kinds of issues. There are different ways of doing it, but some states definitely do force pooling in order to resolve a conflict between minority property owners and majority property owners within a lease block.

With respect to the other parts of the study, we are doing exactly what you said, very little of this is going to be original research. So, what we are having to do is look at studies that have already been done, we are talking to regulators in other states, in Pennsylvania to make sure we know how it has worked in PA, what have they run into. We know that PA, for example, has gone through a couple of rounds of statutory amendments as their industry ramped up, so there were clearly things they experienced and felt a need to respond to with their state legislature, so we are very much relying on information that has been generated in other states and

through other studies from university folks. We are not in a position to do original research on a one-year time frame. We know that. And I expect, when we come to the end of this, there is going to be a section at the end of this study, I am guessing right now, that is going to say there are some issues that probably merit additional study, that we just don't have time to do at this point.

Senator Rabon: Thank you Mr. Chairman and thank you Senator Blake. I would like to expand on what you said just a minute ago. You beat me to the punch. I guess this is more of a comment and maybe an admonition, if you will, to the Department. This is new to us and to the Department and I see a lot of cons here but I don't see a lot of pros and what I would encourage the Department to do is that we start this endeavor and as we move forward, and I hope we can do so without too many stumbling blocks, is that we also work just as hard at trying to facilitate these operations as we do in trying to overburden people with the process. Because, it seems in the past, the process is what we get bogged down in and that is where we tend to lose sight at the end of the tunnel. I just want to encourage the Department to work in positive manner in facilitating things rather than in the opposite manner. Thank you, Senator Blake, because that is where I was heading with that. Thank you.

Ms. Smith: You mentioned one thing, I am glad you said that, because I want to make sure people are clear that what the outline represents is essentially a list of issues. Many of those issues were identified in H-242. A number of them came from comments from the public or from issues that we know from states. It is not intended to be either negative or positive, it is an issue. I guess that what I would suggest that you do, the way we are looking at this is; if we say what is the resource impact, put a parenthetical behind each of these that says, if any. What we are looking at is, are there impacts, are they positive or negative and we are just trying to provide information. So, it is not intended to be negative, it is intended to be neutral at the starting point in terms of, these are just things that have come up, other states have dealt with these issues, members of the public are concerned about these issues, many of them were identified in the bill, but in terms of whether it is positive or negative, that is not where we are at the moment. It is gathering information.

Senator Goolsby: Thank you Mr. Chairman, and I appreciate that remark ma'am. I just, again, we worked really hard on our regulatory reform act to make sure that the laws we pass in North Carolina meet a balance between the cost of the regulation and then what it actually brings to North Carolina, and I sure hope the spirit of the new law we passed here in this state regarding regulatory reform and a cost benefit analysis, and all those kinds of things, I would have felt a lot better if I think Senator Rabon and Senator Blake would have, and maybe other members of the committee, if we would have heard from the Department of Commerce, the Department of Environment and Natural Resources, is that we are working hard with other states that already do this. This is not rocket science, we are trying to get in here and do everything we can to give you all positive feedback. All I have heard today seems to be negative against even trying to move ahead and look at doing this when we suffer from problems overseas with energy, we have all of these concerns with our people and our state and it

just seems like we are approaching all of this—initially Mr. Chairman, from a total negative point of view, and that just disturbs me and I think it disturbs every member of this committee, and I just don't understand this. I know the governor vetoed our bill as far as Energy Jobs Act goes, but I am just trying to understand why this has to be so negative from the get go, and that disturbs me, Mr. Chairman. From the beginning, that seems to be where we are going.

Ms. Smith: Mr. Chairman, I am sorry the committee has that impression, again, we are responding largely to issues that were identified in H-242. We were asked to analyze what the impacts are, potential impacts of this activity in North Carolina, and make recommendations. It is not a regulatory exercise. There won't be any rules coming out of this. It is going to be a report to the GA that simply describes what this activity is, how it works, what the potential impacts are, good bad or indifferent. And we will make some recommendations on regulatory structure because there is no regulatory structure for this kind of activity in the state. What the GA does with that information is going to be up the GA. I mean I think it will be for your information. That is the only intent.

Senator Rucho: Madame Secretary, we do have a blank chalkboard and we have a great opportunity to have model regulations for this state if we go in that direction. I hope we can take full advantage of that and to have a model piece of legislation and regulation at the appropriate time if we do pursue this direction. Thank you for being here.

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